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Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

19 Cr. 0675 (VM)

5 BILL TSAI,

6 Defendant.

7 -----x

8
9 January 17, 2020
4:33 p.m.

10 Before:

11 HON. VICTOR MARRERO,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
Southern District of New York

17 BY: ROBERT LEE BOONE

Assistant United States Attorney

18 PILLSBURY WINTHROP SHAW PITTMAN LLP

Attorneys for Defendant

19 BY: CAROLINA A. FORNOS

20 MARK ROBERT HELLERER

21 - also present -

22 S.A. Nicholas Kroll, FBI

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1 THE COURT: Good afternoon. Thank you. Be seated.

2 This is a proceeding in the matter of United States v.
3 Tsai. It's docket number 19 Cr. 0675.

4 Counsel, please enter your appearances for the record.

5 MR. BOONE: Good afternoon, your Honor. Robert Boone
6 for the government, and here with me at counsel's table is
7 Special Agent Nicholas Kroll from the FBI.

8 THE COURT: Good afternoon. Welcome.

9 MS. FORNOS: Good afternoon, your Honor. Carolina
10 Fornos and Mark Hellerer on behalf of Bill Tsai.

11 THE COURT: Good afternoon.

12 The Court notes for the record that the defendant is
13 present seated next to his attorneys.

14 The Court scheduled this proceeding as the sentencing
15 of the defendant in this matter. Before we proceed, I want to
16 note that the parties were notified yesterday that the
17 transcript of the defendant's plea hearing before Magistrate
18 Judge -- the Magistrate Judge indicates a potential discrepancy
19 between the statutory provisions recited at the hearing and the
20 statutory provisions under which the defendant was charged.

21 I have read the letter from the government, dated
22 January 16, 2020, which conveys the parties' view that this is
23 a transcription error. I accept the parties' recommendation
24 regarding how to proceed. Accordingly, the Court makes clear
25 for the record that despite the transcription error, the

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1 defendant did in fact plead guilty to Information 19 Cr. 0675,
2 charging him with violating, among other things, among other
3 provisions, 15 U.S.C. Section 78j(b), not Section 78(b).

4 Let me ask the parties whether they are satisfied with
5 this clarification and if they are prepared to proceed to
6 sentencing accordingly.

7 Mr. Boone?

8 MR. BOONE: The government is satisfied, your Honor.

9 THE COURT: Ms. Fornos?

10 MS. FORNOS: Yes, your Honor. No objection.

11 THE COURT: I have read and reviewed the final
12 presentence investigation report, dated December 11, 2019,
13 which was prepared in connection with today's sentencing of
14 Mr. Tsai. I have also read the submission from the government,
15 dated January 10, 2020, and the submission from defense
16 counsel, dated January 3, 2020.

17 Mr. Boone, has the government read and reviewed the
18 presentence report?

19 MR. BOONE: Yes, your Honor.

20 THE COURT: Does the government have any objections to
21 the report to raise at this point?

22 MR. BOONE: No, your Honor.

23 THE COURT: Ms. Fornos, have you read and reviewed the
24 presentence report?

25 MS. FORNOS: Yes, your Honor.

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1 THE COURT: Have you had an opportunity to discuss it
2 with Mr. Tsai?

3 MS. FORNOS: Yes, your Honor.

4 THE COURT: And do you have any objections to the
5 report to raise at this point?

6 MS. FORNOS: No, your Honor, no objections.

7 THE COURT: Thank you.

8 Mr. Tsai, please rise.

9 Have you read and reviewed the presentence report?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Have you discussed it with your attorneys?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Thank you. You may be seated.

14 On September 19, 2019, Mr. Tsai pled guilty pursuant
15 to a plea agreement before Magistrate Judge Wang to Count One
16 of Information No. 19 Cr. 0675, which charged him with insider
17 trading, in violation of 15 U.S.C. Sections 78j(b) and 78ff,
18 Title 17 C.F.R. Section 240.10b-5, and Title 18 U.S.C. Section
19 2.

20 This Court accepted the defendant's guilty plea on
21 October 11, 2019. Having confirmed that, despite the
22 transcription error that we just alluded to earlier, the
23 defendant understood the charges against him, the Court now
24 finds that Mr. Tsai entered the plea of guilty knowingly and
25 voluntarily and that there was a factual basis for the guilty

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1 plea.

2 Mr. Boone, does the government have any additional
3 comments for the Court's consideration in connection with
4 sentencing?

5 MR. BOONE: Yes, your Honor, just briefly.

6 I want to first talk about the defendant's conduct.
7 Obviously, there is some detail in our submission, but I just
8 want to highlight certain things.

9 Number one, it is obvious, at least to the government,
10 that one of the basic rules that young bankers are taught when
11 they begin employment is to not commit insider trading. This
12 is not an arcane law or a particularly complex concept.
13 Mr. Tsai was someone who was well versed in what insider
14 trading is and the fact that he simply cannot do it.

15 He, as indicated in the PSR and in the submissions,
16 was someone who was in business school, was someone who in fact
17 excelled so much to be the president of his student council of
18 his business school, was someone who had an opportunity to have
19 a summer internship at the investment bank referenced in the
20 charging documents, and was someone that, through that
21 investment bank, had undergone trainings that again make it
22 very clear from what is essentially sort of Securities Law 101,
23 which is that you cannot commit insider trading. And despite
24 all that, within four months of starting his full-time
25 employment at the investment bank, he in fact began committing

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insider trading.

And the government understands and acknowledges that the defense has made several arguments mitigating the conduct, citing the defendant's age and his lack of experience as reasons for leniency, and perhaps those arguments would carry the day, so to speak, if it were not for the fact in the government's view that even after having made an error in judgment early on in his career, he in fact doubled down on that error just six months later by participating in two additional insider trading schemes back to back in March and April of 2019.

So in the government's view, if nothing else, this conduct shows a lack of respect for the law, a law, as we stated earlier, that is fairly clear not only to sort of financial analysts but, frankly, likely to lay people as well, and despite all that, the defendant still chose to commit that crime and to continue to commit that crime. It is unclear how much longer that conduct would have continued if he had not been arrested in the summer following that spring. So we just want to highlight that for the Court's consideration.

In regards to deterrence, the government understands that the defendant obviously was not a senior executive at the bank or someone who made profits in the millions that is sometimes the case in cases like this that that come before this Court. But we do think there is an important deterrent

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1 effect in making sure individuals who are on that track, who
2 are on that track to be high-level investment professionals and
3 perhaps on the track to be those professionals who commit
4 large-scale insider trading, realize that there are
5 consequences very early on and that those consequences
6 hopefully deter individuals from going down that path. And for
7 the reasons we've stated earlier, the fact that the defendant,
8 at least from the evidence, appeared to be someone going on
9 that path, he was someone in a position of some importance and
10 certainly someone who was on a track to excel in his career and
11 he was also someone who seemed to repeatedly violate one of
12 those basic rules of his employer, it is important to send a
13 message to others in that position that even at that level,
14 even for a hundred grand, there are consequences to that
15 conduct in hopes that it deters their conduct becoming even
16 more egregious.

17 So as we stated in our sentencing submission, we think
18 a guidelines' sentence is appropriate. We rest on that
19 submission, and we just wanted to add those few comments for
20 your consideration.

21 THE COURT: All right. Thank you.

22 Ms. Fornos, do you have any additional comments on
23 behalf of the defendant before the Court proceeds to sentence
24 him?

25 MS. FORNOS: Yes, your Honor. Thank you for your

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1 time.

2 Your Honor, this is Bill Tsai. And in the court with
3 him today are his mother, his uncle, his granduncle, and his
4 close friend.

5 He stands before the Court with such tremendous
6 remorse for his actions. And we heard with the government.
7 The government frames this case as one of lack of respect.
8 But, your Honor, respectfully, we think that this case is more
9 aptly described as one of just gross immaturity, an immaturity
10 that has caused Mr. Tsai great, great punishment. He has to
11 live for the rest of his life with being a convicted felon.
12 And it's not just that, your Honor. He's thrown away his
13 dreams. He's thrown away his education. He wanted to work in
14 the securities industry, and his actions have now barred him
15 from that.

16 In addition, your Honor, and perhaps what's most
17 painful for him, is that his conduct has caused great shame to
18 him and to his family, and it's shame that cannot be undone.

19 But what we would like the Court to know, sitting here
20 today, is that in the last six months, Mr. Tsai has grown up
21 very quickly. Mr. Tsai has done something that individuals who
22 are twice his age, three times his age are not able to always
23 do, and that's to admit your mistakes, own up to your mistakes,
24 and accept responsibility for your actions. And that's exactly
25 what he did.

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1 We want to emphasize to the Court, your Honor, that
2 within days of his arrest, Bill authorized us to communicate to
3 the government that he wanted to accept responsibility for his
4 actions, and that's exactly what he did. He waived indictment.
5 He agreed to the filing of an information. He waived
6 discovery. He agreed to forfeit his proceeds. And not just
7 with the Department of Justice, but he also did the same with
8 the SEC. He was sued civilly by the SEC. He settled that
9 matter. He agreed to disgorge his profits. And now he's going
10 to go through an administrative proceeding that's going to bar
11 him from his dream industry.

12 And that's not all he has done to accept
13 responsibility and to show that he has grown up. He has also
14 obtained two jobs. He now works waiting tables at a
15 restaurant. He works as a customer service representative
16 because he knows that he has a debt that he has to pay back to
17 the government, and he is working very hard to take care of
18 that and to take responsibility for his actions.

19 Your Honor, we know that the Court carefully reviewed
20 all of the sentencing submissions and the letters of support,
21 and we hope that the letters that were submitted on behalf of
22 Bill have shown the Court the kind of person that he really is,
23 his true character. This is a person who gives back to the
24 community. This is a person who has volunteered at a soup
25 kitchen long before his arrest, continued to do so after he was

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1 charged, did more volunteering trying to teach English as a
2 second language to immigrants. This is someone whose letters
3 show that he tries to help others, that he tries to always be a
4 good friend.

5 Your Honor, this is not a situation of a callous
6 criminal or an executive vice president or a seasoned
7 investment advisor or an accountant or a lawyer. We're talking
8 about a 23-year-old who made a colossal mistake and recognizes
9 that.

10 Thankfully, and we hope that the Court can see this
11 through his letters, he has -- he's very fortunate to have a
12 very loving family, who is there to provide him guidance, and
13 in particular his mother has been there by his side to provide
14 guidance and structure and help him get back on track.

15 Your Honor, we heard the government. We understand.
16 We understand the concept of specific and general deterrence.
17 But respectfully, your Honor, in this particular case, that
18 message has been sent loud and clear: In a case where somebody
19 commits insider trading, you will be arrested. You will be
20 publicly prosecuted by the government. You will be charged
21 publicly, sued by the SEC, administratively barred, have to
22 forfeit your proceeds, have to disgorge your profits, be
23 immediately terminated from employment, and have difficulty for
24 the rest of your life finding employment because for the rest
25 of his life he has to live being a convicted felon.

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1 Your Honor, in this particular case, he also has had
2 to live with the shame and the social media and the press
3 around this case. It is one that he will never overcome.

4 There is something that Bill explained that weighs
5 heavily on him. For 22 years he studied, he worked hard, long
6 hours to get into his dream university, long hours to get that
7 internship he really wanted so that he could eventually get his
8 dream job. And now, after all that hard work, after becoming
9 student council president, after all the years of community
10 service, he terribly laments that when he searches his name on
11 the Internet, all he sees is Bill, the convicted felon, and all
12 the awful commentary that has gone along with it.

13 Your Honor, respectfully, we submit that under the
14 facts of this case, of this individual, a noncustodial sentence
15 is appropriate. And Probation recommended a noncustodial
16 sentence, and we agree with that recommendation. Under the
17 facts of this case, taking into consideration the 18 U.S.C.
18 Section 3553(a) factors, the facts of this case, his personal
19 characteristics, the person who he is, his youth, lack of
20 criminal history, an immediate acceptance of responsibility,
21 his endeavor to find jobs so that he can pay back the
22 government, all of those factors, your Honor, respectfully
23 weigh in favor of leniency. And we respectfully request that
24 the Court consider a noncustodial sentence to enable Bill to
25 continue working, to continue giving back to the community, to

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1 move forward with his life.

2 Thank you, your Honor.

3 THE COURT: Thank you.

4 MS. FORNOS: And, your Honor, if the Court will allow
5 it, Mr. Tsai would like to say a few words.

6 THE COURT: That is next in the proceedings.

7 Mr. Tsai, is there anything you would like to say on
8 your own behalf before the Court sentences you?

9 THE DEFENDANT: Yes, your Honor.

10 Your Honor, I'm so sorry. I am so sorry for what I've
11 done. I made a terrible mistake. And I've thrown away
12 everything that my family, my mom, has given me, has worked so
13 hard to give me. And I've also thrown away the opportunity
14 that the company I worked for gave me. And I brought so much
15 shame to my entire family, my mom.

16 And I'm so sorry. Please, please, please give me a
17 chance to prove to her that I'm still the same Bill that she
18 raised me to be. I'm not going to waste it. Please.

19 Thank you for your time.

20 THE COURT: Thank you.

21 In accordance with the decision by the United States
22 Supreme Court in United States v. Booker, while the United
23 States Sentencing Guidelines are not mandatory, the Court
24 nonetheless must consult those guidelines and take them into
25 account when sentencing. Therefore, the Court has considered

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1 the findings of fact stated in the presentence investigation
2 report, as well as the guidelines' analysis and the
3 recommendations contained therein. The Court has weighed this
4 information along with the factors listed in 18 U.S.C. Section
5 3553(a) in coming to its final sentencing decision in this
6 case.

7 The Court adopts the factual recitation in the
8 presentence investigation report regarding the criminal history
9 category, offense level, and sentencing range. Therefore, the
10 Court find that under the guidelines, Mr. Tsai's offense level
11 amounts to 15 and his criminal history category falls into
12 Category I. The statutory maximum sentence of imprisonment is
13 20 years. The guidelines' range of imprisonment for the
14 offense level and criminal history category is 18 to 24 months.

15 Mr. Tsai pled guilty to Count One of insider trading,
16 in violation of 15 U.S.C. Sections 78j(b) and 78ff, Title 17
17 C.F.R. Section 240.10b-5, and Title 18 U.S.C. Section 2. The
18 Probation Department has recommended that the Court impose a
19 sentence of three years' probation to include six months of
20 home confinement.

21 Subsection (a)(1) of 18 U.S.C. Section 3553 requires
22 that the Court take into consideration the nature and
23 circumstances of the offense and the history and
24 characteristics of the defendant. Subsection (a)(2) of 18
25 U.S.C. Section 3553 requires that the Court consider the need

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1 for the sentence to promote certain objectives of the criminal
2 justice system, namely, punishment, specific and general
3 deterrence, as well as rehabilitation. Pursuant to Section
4 3553(a)(6), the Court is also directed to consider the need to
5 avoid unwarranted sentencing disparities among defendants with
6 similar records and similar offenses in other cases as well as
7 in connection with the case at hand.

8 Mr. Tsai, please rise.

9 Taking into account the nature and circumstances of
10 the offense and the history and characteristics of the
11 defendant, and considering all of the factors listed in 18
12 U.S.C. Section 3553(a), the Court finds that a sentence of five
13 years of probation is reasonable and appropriate and that such
14 a term is sufficient but not greater than necessary to promote
15 the proper objectives of sentencing.

16 As a condition of probation, I will direct that you
17 spend 90 days in a community facility or reentry -- community
18 reentry center. That time can be spent either in consecutive
19 days, weeks, or weekends during the course of the five years on
20 probation.

21 You must comply with the standard conditions of
22 probation and the following mandatory conditions:

23 You shall not commit another federal, state or local
24 crime;

25 You shall not unlawfully possess a controlled

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1 substance;

2 You shall refrain from any unlawful use of a
3 controlled substance. You shall submit to one drug test within
4 15 days of release from completion of your 90 days, as
5 determined by the Probation Department.

6 You shall pay the assessments imposed in accordance
7 with 18 U.S.C. Section 3013.

8 I will not impose a fine because the Court has
9 determined that you will not have the ability to pay such a
10 fine in light of the financial obligations that you have for
11 forfeiture and restitution.

12 You must notify the Court of any material change in
13 your economic circumstances that might affect your ability to
14 pay restitution, fines, and special assessments.

15 You are also ordered to pay to the United States a
16 mandatory assessment of \$100 that shall be due immediately.

17 You must provide the probation officer with access to
18 any requested financial information. You must not incur any
19 any new credit card charges or open additional lines of credit
20 without the approval of the probation officer unless you are in
21 compliance with the installment payment schedule.

22 Mr. Tsai, do you understand each of the conditions
23 that the Court has imposed?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: In imposing this sentence, I have taken

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1 into account a number of considerations. First is the
2 seriousness of the offense of insider trading, and this is in
3 this context one that's important because the facts do not
4 involve a situation where somebody is tipped on one occasion,
5 tips to a friend or family member; this is a case involving a
6 member of the industry in a very important position of trust
7 and one that required exercise of sound judgment on behalf of
8 the employer and on behalf of financial markets in order to
9 ensure the integrity of financial markets. Mr. Tsai had been
10 trained and presumably had some intimate knowledge of the
11 requirements of avoiding insider trading, and, nonetheless,
12 again, it was not on one occasion but on three occasions within
13 a year that he engaged in this unlawful conduct.

14 It is important to the integrity of financial markets
15 that people in positions of trust and responsibility within the
16 industry know that not only is this behavior unlawful but it
17 carries substantial consequences to those who cross the line.

18 I have also taken into account the defendant's
19 extraordinary acceptance of responsibility, his social
20 activities, and his genuine expression of remorse, as well as
21 his age and inexperience at the time of the commission of his
22 unlawful conduct.

23 The sentence as stated is imposed.

24 Mr. Tsai, to the extent you have a right to appeal
25 your sentence and you are unable to pay the cost of an appeal,

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1 you have the right to apply for leave to appeal in forma
2 pauperis, meaning as a poor person. If you make such a
3 request, the Clerk of Court must immediately prepare and file a
4 Notice of Appeal on your behalf.

5 Do you understand your right to appeal, to the extent
6 that it may exist?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: I omitted to mention one thing for the
9 government, Mr. Boone.

10 Are there forfeiture and restitution agreements in
11 this case?

12 MR. BOONE: Your Honor, the government is not seeking
13 restitution. There is a forfeiture agreement. We sent over a
14 copy of the signed agreement I believe last week. The amount
15 of forfeiture agreed upon by the parties in that Preliminary
16 Order of Forfeiture is \$125,000 -- sorry, \$125,997.

17 THE COURT: All right. Mr. Tsai, you are ordered to
18 pay forfeiture to the government, in accordance with the terms
19 of the forfeiture order, in the amount of \$125,997.

20 Is there anything else from the government, Mr. Boone?
21 Are there any remaining counts or underlying indictments that
22 need to be dismissed at this time?

23 MR. BOONE: No, your Honor.

24 THE COURT: Anything else from the defendant,
25 Ms. Fornos?

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1 MS. FORNOS: Yes, your Honor. May I just ask for one
2 clarification?

3 During the period of probation, we would respectfully
4 request that Mr. Tsai be allowed to travel to see his
5 grandmother, who is out of the country and is 84 years old and
6 in not the best of health, of course provided that he inform
7 his probation officer exactly when he is leaving and report
8 back immediately when he returns.

9 THE COURT: Those issues can be dealt with on a
10 case-by-case basis by application to the Court and obtaining
11 the consent of the government and the Probation Department as
12 the occasions arise.

13 MS. FORNOS: Thank you, your Honor.

14 THE DEFENDANT: Thank you, your Honor.

15 THE COURT: Have a good day and a good weekend.

16 MR. BOONE: Thank you.

17 (Adjourned)